
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

SALVADOR RAMIREZ,

Defendant.

MEMORANDUM DECISION AND
ORDER DENYING DEFENDANT’S
MOTION FOR REDUCTION OF
SENTENCE

Case No. 2:09-CR-784 TS

District Judge Ted Stewart

This matter is before the Court on Defendant’s Motion for Reduction of Sentence. “A district court is authorized to modify a Defendant’s sentence only in specified instances where Congress has expressly granted the court jurisdiction to do so.”¹ 18 U.S.C. § 3582(c)(1)(A) allows the Court to modify a term of imprisonment under certain circumstances. Relevant here,

the court . . . upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . extraordinary and compelling reasons warrant such a reduction.

Where, as here, a defendant has fully exhausted his administrative rights, the Court may reduce a defendant’s term of imprisonment where: (1) “extraordinary and compelling reasons” warrant a sentence reduction; (2) the sentence reduction is consistent with “applicable policy

¹ *United States v. Blackwell*, 81 F.3d 945, 947 (10th Cir. 1996) (citations omitted).

statements issued by the Sentencing Commission;” and (3) the reduction is consistent with the Court’s consideration of the 18 U.S.C. § 3553(a) factors.²

Defendant’s Motion does not present any reasons for his request, let alone extraordinary and compelling reasons that warrant a sentence reduction. Based upon the letter from the Bureau of Prisons attached to Defendant’s Motion, it appears that Defendant’s request is based on the current COVID-19 pandemic. However, Defendant’s generalized fear of COVID-19 is not sufficient to demonstrate extraordinary and compelling reasons warranting release.³ Moreover, Defendant has received the Johnson & Johnson vaccine.⁴ A number of courts, including this one, have held that a fully vaccinated individual, such as Mr. Ramirez, cannot show an “‘extraordinary and compelling’ reason within the meaning of Section 3582(c)(1)(A) when the motion is based on COVID-19 concerns.”⁵ Without more, Defendant’s request must be denied.

² 18 U.S.C. § 3582(c)(1)(A); *see also United States v. McGee*, 992 F.3d 1035, 1042 (10th Cir. 2021).

³ *See, e.g., United States v. Thompson*, 984 F.3d 431, 435 (5th Cir. 2021) (“Fear of COVID doesn’t automatically entitle a prisoner to release.”); *see also United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (stating that “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release”).

⁴ Docket No. 423-1, at 13.

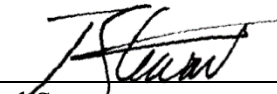
⁵ *United States v. Burgoon*, No. 07-20072-05-JWL, 2021 WL 1736873, at *2 (D. Kan. May 3, 2021) (collecting cases); *cf. United States v. Hald*, ---F.4th---, 2021 WL 3439012, at *1 n.2 (10th Cir. Aug. 6, 2021) (noting there is “certainly room for doubt that Defendants’ present circumstances would support a finding of ‘extraordinary and compelling reasons’” where appellants “had either been vaccinated or been offered the opportunity to be vaccinated against COVID-19”).

It is therefore

ORDERED that Defendant's Motion for Reduction of Sentence (Docket No. 414) is
DENIED.

DATED this 14th day of September, 2021.

BY THE COURT:



Ted Stewart
United States District Judge